

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Johnnie Gathers,	)	
	)	
Plaintiff,	)	C.A. No. 9:09-35-HMH-BM
	)	
vs.	)	<b>OPINION &amp; ORDER</b>
	)	
Lt. Brayboy, Sgt. Heyward, Sgt. Jones and	)	
Officer Morris, in their individual capacity,	)	
	)	
Defendants.	)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Bristow Marchant, made in accordance with 28 U.S.C. § 636(b)(1) (2006) and Local Civil Rule 73.02 of the District of South Carolina.<sup>1</sup> Johnnie Gathers, a state prisoner proceeding pro se, brought this action under 42 U.S.C. § 1983 alleging “ab[]use of authority excessive use of force, assault, [and] cruel and unusual punishment” by Defendants. (Compl. II(B).) Defendants filed a motion for summary judgment on July 13, 2009. In his Report and Recommendation, Magistrate Judge Marchant recommends granting Defendants’ motion for summary judgment.

Gathers filed objections to the Report and Recommendation. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate

---

<sup>1</sup> The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of Gathers' objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, the court was able to glean one specific objection. Gathers argues that the recommendation of the magistrate judge to grant Defendants' motion for summary judgment is improper because Gathers was not given an opportunity to pursue discovery.

(Objections, generally)

Gathers alleges that "summary judgment in this six-month old case was erroneous" because he was not "afforded the opportunity for discovery." (Id. at 6-7.); (Add'l Objections 9.) Gathers' objection is without merit. First, the discovery deadlines in this case have passed and there were no pending motions for discovery at the time of the magistrate judge's recommendation. Second, Gathers has failed to indicate that there is any essential evidence that he is in need of in order to sufficiently oppose Defendants' motion for summary judgment.

"Generally speaking, summary judgment [must] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." Harrods Ltd. v. Sixty Internet Domain Names, 302 F.3d 214, 244 (4th Cir. 2002) (internal quotation marks omitted). "At the same time, the party opposing summary judgment cannot complain that summary judgment was granted without discovery unless that party had made an attempt to oppose the motion on the grounds that more time was needed for discovery." Id. (internal

quotation marks omitted). Gathers has failed to establish that there is discoverable evidence that is necessary in order to sufficiently oppose Defendants' motion for summary judgment. Further, he has not shown that he has made any unfulfilled discovery requests. As such, Gathers' objection is without merit.

After a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Marchant's Report and Recommendation.

Therefore, it is

**ORDERED** that Defendants' motion for summary judgment, docket number 33, is granted.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
September 1, 2009

#### **NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.